
FINANCIAL SERVICES AND E-COMMERCE

REFLECTIONS ON CREDIT CARD PRACTICES AND LEGISLATIVE REFORM PROPOSALS

By Todd J. Zywicki*

The growth in consumer use of credit cards over the past three decades has transformed the American economy, placing in consumers' hands one of the most powerful financial innovations since the dawn of money itself. Credit cards have transformed the ways in which we shop, travel, and live. They have enabled the rise of the e-commerce economy, delivering goods and services to consumers' doorsteps and permitting consumers to shop when and where they like, unconstrained by traditional limits on competition and consumer choice. They have enabled consumers to travel the world without the inconvenience of travelers' checks. And they have transformed the way in which we live, from such small improvements such as relieving us the inconvenience of checks and frequent visits to ATM machines to large improvements such as providing security against crime. Credit cards can be used as a transactional medium, a source of credit, or even as a short-term source of cash. Credit cards provide consumers with additional benefits, from cash back on purchases, frequent flier miles, car rental insurance, dispute resolution services with merchants, and 24-hour customer service. It has been aptly observed that that with a credit card you can buy a car; without a credit card you cannot even rent one. Many of these benefits, of course, have been most salient for lower-income, young, and other similar populations, and unsurprisingly, growth in credit card use has been rapid among those populations.

But the myriad uses of credit cards and the increasing heterogeneity of credit card owners has spawned increasing complexity in credit card terms and concerns about confusion that may reduce consumer welfare. American consumers encounter complexity every day in the goods and services they purchase, such as cars, computers, and medical services, just to name a few. And the complexity of credit card terms is modest when compared to that of the Internal Revenue Code, as are the penalties (financial and otherwise) for failure to understand its terms. The relevant issue for regulation, therefore, is whether the complexity is warranted in light of its benefits.

In considering whether further legislation or regulation of credit card terms or disclosures is appropriate, two questions should be considered. First, what is the problem to be corrected through regulation? And second, will the benefits of the regulation justify the costs, including the unintended consequences of the regulation?

Based on what is known about consumer use of credit cards and credit card practices, it is doubtful that an analysis of these simple questions can justify further governmental

intervention in the credit card industry. In fact, the increasing dynamism of the credit card industry suggests that regulators would be better served by revisiting, modernizing, or reconsidering certain extant regulations, rather than piling on additional regulation.

This is not to imply that certain credit card issuers or practices do not seem unfair or improper. But there are ample tools for courts and regulators to attack deceptive and fraudulent practices on a case-by-case basis when they arise. Unlike case-by-case common law adjudication, however, legislation or regulation addresses itself to *categorical* rulemaking, thus before categorical intervention is warranted it is necessary to examine whether categorical problems have arisen.

I. WHAT IS THE PROBLEM TO BE CORRECTED THROUGH REGULATION?

Advocates of greater regulation have alleged three problems that are purported to justify additional regulation of the credit card market: (1) Consumer overindebtedness caused by access to credit cards, (2) Unjustifiably "high" interest rates on credit cards, and (3) A growing use of so-called "hidden" fees. Reviewing the empirical evidence available on these issues, however, there is no sound evidence that any of them present a meaningful problem for which greater regulation is appropriate.

A. Consumer Overindebtedness

There is no doubt that consumer use of credit cards has increased over time, as has credit card debt. But available evidence reveals that this increase in credit card debt has not in fact resulted in an increased financial distress for American households. Instead, this increased use of credit cards has been a *substitution* from other types of consumer credit to an increased use of credit cards.¹ For instance, when consumers in earlier generations purchased furniture, new appliances, or consumer goods, they typically purchased those items "on time" by opening an installment loan and repaying the loan in monthly payments or through a layaway plan. A consumer who needed unrestricted funds to pay for a vacation or finance a car repair would typically get a loan from a personal finance company or a pawn shop. Today, many of these purchases and short-term loans would be financed by a credit card, which provides ready access to a line of credit when needed, without being required to provide a purchase-money security interest, dealing with the up-front expense and delay of a personal finance loan, or pawning goods.² Credit cards are far more flexible and typically less expensive than these alternative forms of consumer credit, thereby explaining their rapid growth in consumer popularity over time. Federal Reserve economist Thomas Durkin observes that credit cards "have largely replaced the installment-purchase plans that were important to the sales volume at many retail stores in earlier decades," especially for the purchase of appliances, furniture, and other durable goods.³ Former Federal

* Todd J. Zywicki is Professor of Law at George Mason University. This article is adapted from testimony before the House of Representatives Financial Services Committee Subcommittee on Financial Institutions and Consumer Credit Hearing on "Credit Card Practices: Current Consumer and Regulatory Issues." Portions of this testimony also draw on a forthcoming book by the author on consumer credit and consumer bankruptcy.

Reserve Chairman Alan Greenspan similarly observed, “[T]he rise in credit card debt in the latter half of the 1990s is mirrored by a fall in unsecured personal loans.”⁴

In fact, the evidence suggests that the growth in credit cards as a source of consumer credit is explained almost completely by this substitution effect. Thus, even as credit card use has risen rapidly over time, it does not appear that this has contributed to any increase in consumer financial distress.⁵

Since 1980, the Federal Reserve has calculated on a quarterly basis the “debt service ratio,” which measures the proportion of a household’s income dedicated each month to payment of its debts.

As this figure illustrates (top), the overall debt service ratio for non-mortgage debt (consumer revolving plus non-revolving debt) has fluctuated in a fairly narrow band during the period 1980 to 2006. In fact, the non-mortgage debt service ratio was actually slightly higher at the beginning of the data series in 1980 (0.0633) than at the end in the first quarter of 2006 (0.0616) with local peaks and troughs throughout.

Further isolating non-mortgage consumer debt into revolving and nonrevolving components illustrates the substitution effect (see bottom graph).

As can be readily observed, from 1980 there has been a gradual downward trend in the debt service burden of non-revolving installment credit, such as car loans, retail store credit (such as for appliances or other consumer goods) and unsecured loans from personal finance companies, that mirrors the upward trend for the credit card debt service burden over this same period, leaving the overall consumer credit debt service ratio unchanged.

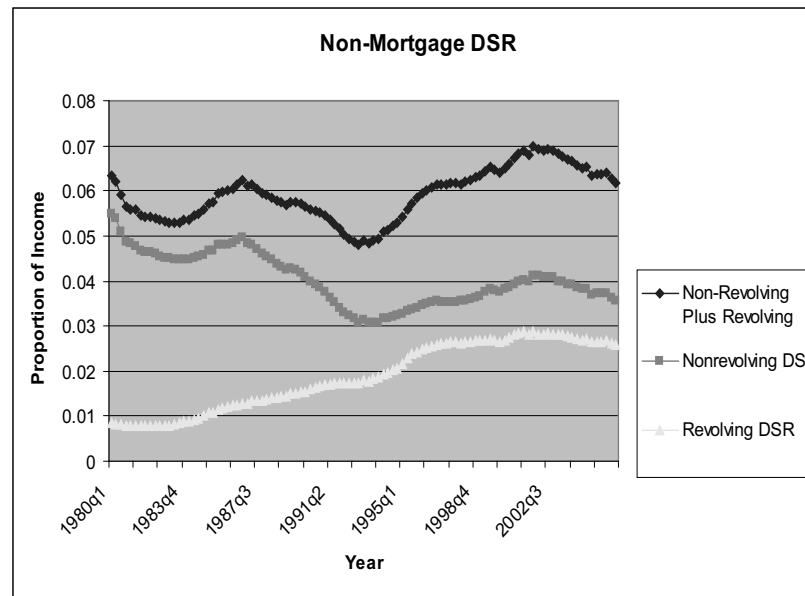
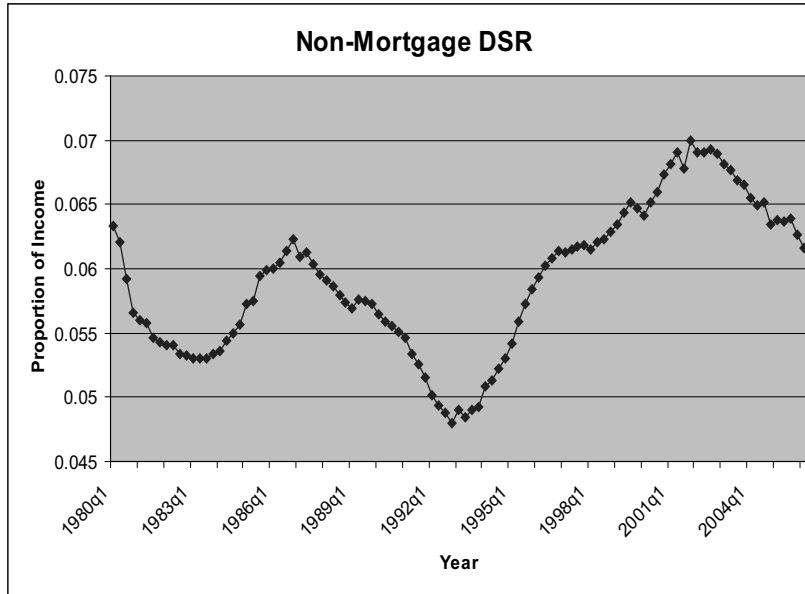
Moreover, according to the Survey of Consumer Finances, the percentage of households in financial distress (as measured by a total debt service ratio, including mortgage credit, of greater than 40%)

has fluctuated within a narrow band since 1989.⁶

This substitution effect of credit card for other types of consumer credit has been most pronounced for lower-income debtors, primarily because this group historically has faced the most limited credit options; thus, credit cards are likely to seem especially attractive to them. As a report of the Chicago Federal Reserve Bank concluded, “The increase in the credit card debt burden for the lowest income group appears to be offset by a drop in the installment debt burden. This suggests that there has

not been a substantial increase in high-interest debt for low-income households, but these households have merely substituted one type of high-interest debt for another.”⁷ As with the overall population, the percentage of lowest-quintile households in financial distress has been largely constant since 1989, and in fact, the percentage of lowest-income households in financial distress is actually at its lowest level since 1989.

In fact, it is likely that this data actually tends to *overestimate* the contribution of revolving debt to the debt service ratio, because



of peculiarities in the way in which the debt service ratio is measured. First, there has been a dramatic increase in household wealth holdings over the past decade or so, first because of the roaring stock market of the late 1990s, and then the rapid appreciation in housing values into the 2000s. Because consumers rationally borrow against and consume some percentage their accumulated wealth, during periods of rapidly increasing household wealth (such as during the 1990s) consumers would be expected to increase their consumption and consumer debt

in order to liquidate some of this accumulated wealth. The ratio of consumer credit to household net worth has been about 4% of household wealth for at least the past fifty years; thus, as consumer wealth rises, consumers will tend to increase their debt holdings even though their measured income does not increase.⁸

Second, the data used here to measure revolving credit likely tends to overestimate the true amount of revolving credit because of a rise in transactional use over time, an overestimation that tends to grow over time. Revolving credit is measured by the credit card balance *outstanding* at the end of a given month, regardless of whether it is actually revolved or paid off at the end of the billing cycle. As a result, the data also report as part of outstanding revolving credit balances on transactional accounts that will be paid at the close of the billing cycle, but happen to be outstanding at the time of reporting. Because some of this transactional debt is still outstanding at the end of the month, it is recorded as an outstanding debt balance and thus an increase in transactional credit card use will artificially increase the measured amount of revolving credit and overstate revolving credit as a percentage of income.

Transactional or “convenience” use of credit cards as a purchasing rather credit medium has been rising over time, both in terms of number of credit card transactions as well as dollar values. During the past fifteen years, convenience use grew by approximately 15% per year, whereas the amount borrowed on credit cards as revolving credit grew only about 6.5% per year.⁹ In part, the increase in transactional use of credit cards has been driven by the spread of rewards cards, such as cash-back programs or frequent flyer miles.

The mismeasurement of transactional credit card use as credit card borrowing tends to overstate credit card debt by approximately ten percent, a figure that has doubled in the past decade as a result of the rapid rise of credit card convenience use.¹⁰ The percentage of credit card transactions that are paid off at the end of each month relative to those that end up revolving has risen over time, indicating a growth in convenience use. In addition, the median monthly charge amount for convenience users has risen over four times more rapidly for convenience users than for revolvers. The median monthly charge for convenience users has increased by about \$130 (from \$233 in 1991 to \$363 in 2001), whereas the average charge of revolvers is substantially smaller and has increased more slowly, rising only \$30 during that same time period (from \$117 to \$147). Again,

much of this growth in the median size of transactional purchases probably results from a rise in cash-back and cobranding benefits. In addition, because convenience users do not have to pay for their purchases until the end of the billing period *plus* the grace period after receiving their bill, they have the opportunity to take advantage of interest rate “float” during the time between their purchase and payment of the obligation, which may be as long as forty-five to sixty days. During that period, a transactional user essentially receives a free loan from the credit card issuer at zero percent interest,¹¹ during which time those same funds can be invested in assets that generate a positive return, even if only a money market account or similar safe, short-term investment. In fact, empirical evidence tends to suggest that consumers do exactly this—convenience users tend to carry smaller precautionary balances in their checking accounts than revolvers, suggesting that they are taking advantage of this

float. In addition, revolvers are more likely to make use of debit cards than are non-revolvers, which can be explained by the fact that revolvers do not receive the benefit of interest-rate float because they are required to pay the full interest on the account.¹²

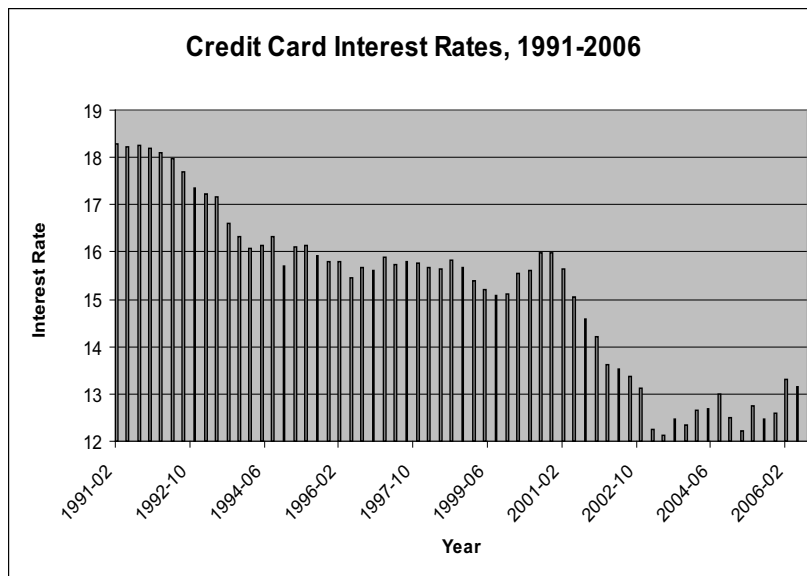
Overall, therefore, there is no evidence that increased use of credit cards has

caused consumers as a whole to become overindebted. In fact, the rise in credit card use is the result of a substitution away from other less-attractive forms of credit (because of cost, flexibility, or other drawbacks such as the need to pawn personal goods) to credit cards.

B. “High” Credit Card Interest Rates

Many commentators insist that the growth in credit card use as a source of revolving credit is irrational in light of the “high” interest rates charged on credit cards.¹³ But credit card interest rates have fallen substantially over the past fifteen years (see graph above).

Annual fees, which were once a standard component of credit card contracts, virtually disappeared from credit cards during this period, except for those cards that offer frequent flier miles or some other benefit program that requires some administrative activity.¹⁴ This elimination of annual fees, which were in the range of \$20-\$50 per year, was a massive across-the-board price reduction that not only reduced the cost of credit cards to consumers, but also increased competition in the credit card market by making it easier and less-expensive for consumers to carry multiple cards and to use the cheapest or most appropriate card for any given transaction.



This rapid decline in credit card interest rates explains the substitution from other types of consumer credit. Compare credit cards to the closest alternative to credit card borrowing, the traditional short-term unsecured installment loan, such as from a personal finance company. The following figure (top) displays interest rates on 24-month unsecured installment loans versus credit card interest rates for the past thirty years.

As can be readily observed, the difference between interest rates on short-term personal installment loans and credit card accounts has narrowed over time. Indeed, in recent years the interest rate on credit card accounts has frequently fallen below that of short-term personal loans. A recent survey of consumer banking rates in the Washington, D.C., area found the prevailing interest rate on credit cards was 8.16%, whereas the prevailing rate for personal loans was 10.45%.¹⁵ Moreover, once up-front initiation fees on personal loans are taken into consideration the overall cost of personal loans is almost certainly higher overall.¹⁶ And this does not even consider the time, in-

convenience, and more limited usefulness of a personal finance loan, or the more flexible repayment option of credit cards. According to one survey conducted by the Federal Reserve, 73% of consumers report that the option to revolve balances on their credit cards makes it “easier” to manage their finances versus only 10% who said this made it “more difficult.”¹⁷

This decline in credit card interest rates has resulted from robust competition in the credit card market and savvy shopping by consumers. Survey evidence indicates that consumers who revolve credit card balances are extremely likely to be aware of the interest rate on their credit cards and to comparison shop among cards on that basis, and those who carry larger balances are even more likely to be aware of and comparison shop on this

term than those who revolve smaller balances.¹⁸ By contrast, those who do not revolve balances tend to focus on other aspects of credit card contracts, such as whether there is an annual fee, the grace period for payment, or benefits such as frequent flier miles. In fact, consistent with the observation of more aggressive interest rate shopping by revolvers, those who revolve bal-

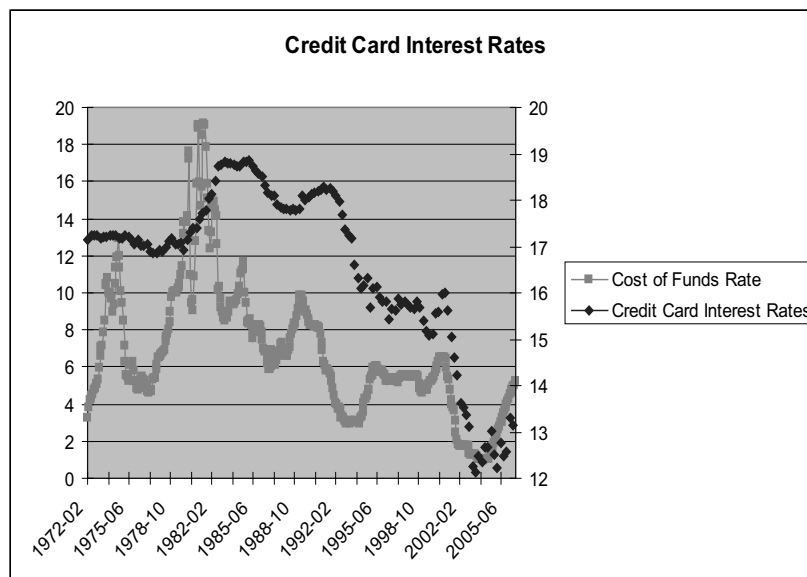
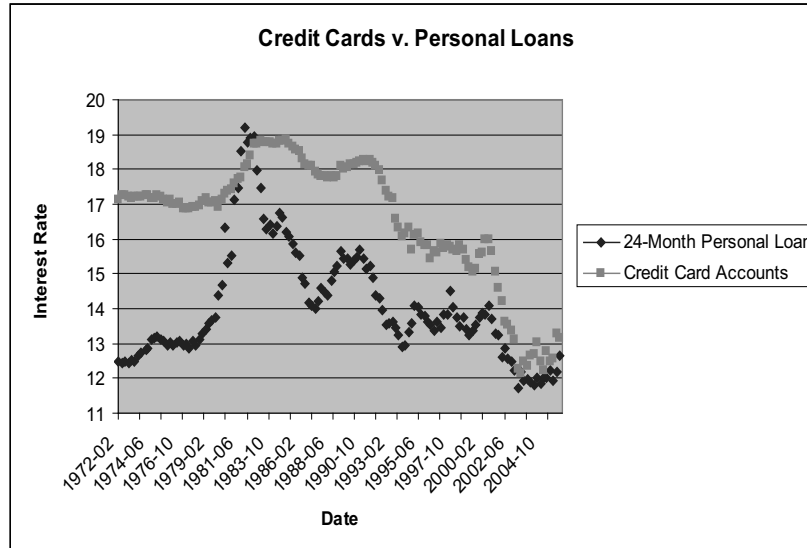
ances are charged *lower* interest rates on average than those who do not.¹⁹

Empirical evidence indicates that credit card interest rates also generally reflect changes in the riskiness of credit card lending. Thus, when credit card chargeoffs increase, the spread charged between the underlying cost of funds and the interest rate rises.²⁰

Furthermore, credit card interest rates have become less “sticky” over time, indicating that technological and risk-scoring innovations as well as more flexible risk-based pricing (as detailed below) has made credit cards even more responsive to competitive pressures. Accord-

ing to the General Accounting Office 93% of the cards they examined in 2005 had variable interest rates—a rise of nine percentage points in just two years.²¹ As a result, interest rates on credit cards have become more closely tied to overall interest rates in the economy, as illustrated in the bottom figure.

As can be seen, interest rates on credit cards historically were relatively “sticky,” when compared to other types of interest.²² But note in particular that interest rates on credit cards were *equally sticky* throughout the *entire period* of 1972-1989. The era of the 1970s, of course, was an era of dramatically *increasing* interest rates—essentially the mirror opposite of the falling interest rates of the 1980s. During the period 1972-1982, the federal funds rate rose from a monthly low of 3.29%



in February 1972 to a high of 19.10% in June 1981. Annual averages ranged from 4.43% in 1972, steadily increasing to 16.38% in 1982, before they started falling again. Thus, credit card interest rates were *also* sticky during the 1970s and early-1980s despite a *rising* cost of funds rate. Regardless of whether the cost of funds rate is rising or falling, for a period of twenty years the interest rate on credit cards has remained relatively constant, until the decline in interest rates in recent years. If credit card issuers were reaping large profits off the “spread” between the cost of funds and interest rates in the 1980s, they by definition were suffering equally large losses during the 1970s and the early 1980s. In fact, during this period, the average return on credit card operations was lower than for other sectors of banking activity. So, in general, whether the cost of funds rate has been rising or falling, interest rates on credit cards have been much less responsive to changes in the cost of funds than have other forms of consumer credit.

In recent years, however, credit card interest rates became much more responsive to changes in the cost of funds rate during this period. Beginning with the final quarter of 1994 to the present, the interest rates on credit cards became tied much more closely to the cost of funds rate rose, and for credit card accounts actually assessed interest, the fit is even tighter, again likely reflecting the higher emphasis placed on this term by revolvers when shopping for cards.²³

On the whole, therefore, there appears to be no evidence of any market failure with respect to interest rates on credit cards. Competition and increasingly sophisticated consumer choice have brought about lower and more responsive interest rates over time. Alternative types of consumer credit offer similar interest rates, but often higher fees and more inconvenience than do credit cards.

C. Fees and Other Price Terms

Interest rates on credit cards have fallen and become more flexible during the past decade, but during that same time period late fees, overdraft fees, and other fees have risen in frequency and amount. These fees remain only a relatively small percentage of issuers’ revenues, however, only amounting to about 10% of issuers’ revenues, whereas interest payments still amount to about 70% of revenues.²⁴ The remainder of revenue is generated by merchant discount fees and the like. Moreover, although the GAO was able to find some isolated instances where assessment of these fees imposed an undue hardship on particular consumers, it was unable to find any systematic evidence of categorical abuse or misuse of these fees.

This increased use of penalty fees arose during the same time period that credit card interest rates both became lower and more flexible. This does not appear to be a coincidence. Evidence indicates that, in general, these fees are risk-based fees triggered by actual borrowing behavior and when used in combination with interest rates provides issuers with greater flexibility in pricing credit terms than relying on interest rates alone. Interest rates are generally an *ex ante* before the fact estimate of a given borrower’s likelihood of default. Late fees, over-limit fees, and other similar fees, by contrast, are more tightly tied to the borrower’s exhibited risky behavior. The only systematic empirical study of these fees of which I am aware concludes that these fees are risk-based and complement

interest rates for efficient risk pricing.²⁵ Massoud, Saunders, and Scholnick find, for example, that a one standard deviation in bankruptcy per capita leads to an increase in penalty fees of \$0.62 to \$1.31. Similarly, a one standard deviation change in the chargeoff ratio was found to change late fees in a range of \$4.35 to \$7.57. In addition, they find that a 1 basis point reduction in card interest rates will result in an increase in penalty fees of between 0.88 and 4.11 cents. Thus, in their study, a one standard deviation in credit card interest rates (273 basis points) was estimated to change late fees by \$2.40. Moreover, they found no evidence that assessed penalties were larger for low-income borrowers.

The increased use of risk-based fees has occurred at the same time as increased variable-rate pricing on credit cards, as the combination of these two pricing mechanisms is evidently more efficient than interest rates alone. In addition, it appears that consumers who pay these fees are not surprised by their existence, but are aware of them before they enter into the transaction that triggers the fee.²⁶

In addition, if credit card penalty fees were actually some sort of new form of consumer abuse, rather than simply a more accurate pricing scheme, then this tradeoff between higher risk-based fees and lower interest rates would result in larger economic rents or “economic profits” to the banking industry. In fact, return on assets has been largely constant for credit card banks over the past two decades, even though there has been a steady rise in the returns of other commercial banks.²⁷ Thus, during the early days of credit cards, issuers relied heavily on annual fees that were assessed on all cardholders, regardless of risk. During the 1990s, issuers phased out widely-disliked annual fees and moved toward greater emphasis on interest rates that were more closely tied to borrower risk. The gradual increase in the use of risk-based fees to supplement interest rates has made credit pricing reflect risk still further. This suggests that the transition to more risk-based pricing has come about through market competition, resulting in more efficient pricing of credit terms to consumers. First, there was a general phasing out of annual fees and greater emphasis on interest rates, then recent years has seen a gradual increase in the use of penalty fees to further more closely tailor price to cardholder risk.

II. COST-BENEFIT ANALYSIS AND UNINTENDED CONSEQUENCES

Available evidence indicates that the credit card market is competitive and responsive to consumer choice. Understanding the economics of the credit card market therefore raises serious challenges for any proposals to heighten regulation of the credit card market. In fact, misguided regulation can have serious unintended consequences that will end up reducing consumer welfare; thus, any proposal for additional regulation should be studied carefully to ensure that the benefits of any such regulation exceed the costs, including any unintended consequences that such regulation is likely to spawn. In addition, it would be wise to examine the continuing relevance and utility of existing regulations before proposing new regulations.

There are three basic manners in which credit can be regulated: substantive regulation, disclosure regulation, or market and common law “regulation.” Each has costs and benefits.

In short, consumers seem overwhelmingly satisfied with their credit cards, the information they receive from credit card issuers, and ease with which they can get information about their cards. Credit card issuers appear to have the incentives to provide timely and accurate information to consumers, and by all accounts appear to be doing so.

IV. MARKET COMPETITION AND COMMON LAW AS REGULATION

It must also be kept in mind that market competition is a form of regulation as well. The credit card market is extremely competitive, with thousands of issuers constantly competing to woo consumers with better offers. Consumers routinely carry as many as four credit cards in their wallets, ready to switch immediately to the card that offers a more attractive package of benefits and terms. In such a market, it is unlikely that oppressive or unfriendly contract terms would last, and in fact this seems to be the case. The GAO Report found, for instance, that only three of the twenty-eight cards that they examined had “universal default” clauses in 2005.³⁷ The GAO Report also found that between 2003 and 2005 only a minority of credit card issuers used the so-called “double-cycle billing method” of calculating finance charges and even those issuers have eliminated that scheme today.³⁸ In addition, only 2% of cards charge annual fees, and virtually all of them provide some rewards program in return. In fact, annual fees traditionally have been the cost of credit cards most despised by consumers—in fact, when annual fees were first implemented in the 1970s, consumers cancelled 8% of their credit cards immediately.³⁹

In addition, courts have used traditional common law rules and contract remedies to punish fraudulent or deceptive practices by card issuers. This has been quite efficacious in protecting consumers and raises further questions about the need for additional regulation.

Thus, although issuers may try to impose on consumers a variety of disagreeable terms, the ease with which consumers can shift from one card to another, and the heated competition among issuers for consumer loyalty, renders such a scenario relatively implausible. Whether annual fees, universal default clauses, or “double-cycle billing,” the market appears to be quite self-correcting in terms of delivering to consumers the credit card products that they desire—which explains the 90% positive satisfaction rate described above.

Endnotes

- 1 See ZYWICKI, *BANKRUPTCY LAW AND POLICY*, ch. 3.
- 2 Wal-Mart recently announced, for instance, that it was terminating its once-popular layaway program. Like other major department stores, Wal-Mart acknowledged that this form of credit had become irrelevant because of widespread access to credit cards. Unlike layaway, purchasing goods using a credit card permits the consumer to use the goods while paying them off, whereas under layaway the store keeps the goods until they are paid for.
- 3 See Thomas A. Durkin, *Credit Cards: Use and Consumer Attitudes, 1970–2000*, 86 FED. RES. BULL. 623 (2000).
- 4 Alan Greenspan, *Understanding Household Debt Obligations*, Remarks Given at the Credit Union Nat'l Ass'n 2004 Gov'tal Affairs Conf. (Feb.

23, 2004), available at <http://www.federalreserve.gov/boarddocs/speeches/2004/20040223/default.htm>.

5 Accord Bd. OF GOVERNORS OF THE FED. RESERVE, REP. TO CONGRESS ON PRACTICES OF THE CONSUMER CREDIT INDUSTRY IN SOLICITING AND EXTENDING CREDIT AND THEIR EFFECTS ON CONSUMER DEBT AND INSOLVENCY 5 (June 2006).

6 *Id.* at 13.

7 Wendy M. Edelberg & Jonas D. M. Fisher, *Household Debt*, CHI. FED. LETTER, Nov. 1997, at 1, 3 (1997); see also *id.* at 4 (“[I]ncreases in credit card debt service of lower-income households have been offset to a large extent by reductions in the servicing of installment debt.”); Arthur B. Kennickell et al., *Family Finances in the U.S.: Recent Evidence from the Survey of Consumer Finances*, 83 FED. RES. BULL. 17 (1997) (noting that the share of families using installment borrowing fell between 1989 and 1995 as a result of increased use of mortgages, credit cards, and automobile leasing); Glenn B. Canner & James T. Fergus, *The Economic Effects of Proposed Ceilings on Credit Card Interest Rates*, 73 FED. RES. BULL. 1, 4 (1987) (noting that rise in credit card use may have been the result of “a substitution of credit card borrowing for other types of installment credit that do not provide flexible repayment terms”).

8 See Thomas A. Durkin, Comment, *in* THE IMPACT OF PUBLIC POLICY ON CONSUMER CREDIT 36, 40 (Thomas A. Durkin & Michael E. Staten eds., 2002).

9 Kathleen W. Johnson, *Convenience or Necessity? Understanding the Recent Rise in Credit Card Debt*, Finance and Economics Discussion Series, Fed. Reserve Bd., 2004-47.

10 See *id.*

11 Technically the interest rate is slightly negative because of the time value of money.

12 Jonathan Zinman, *Why Use Debit Instead of Credit? Consumer Choice in a Trillion Dollar Market*. Brown and Plache find that 62 percent of revolvers who acquired a general purpose debit card actually used that card whereas only 37 percent of nonrevolvers used their debit card. See Tom Brown & Lacy Plache, *Paying with Plastic: Maybe Not So Crazy*, 73 U. CHICAGO L. REV. 63, 84 (2006).

13 Note that if the interest rates really were higher on credit cards than on the types of credit that they supplant, then one would expect this to be reflected in a higher debt-service ratio, which as we have just seen, it is not.

14 U.S. GEN. ACCOUNTING OFFICE, *CREDIT CARDS: INCREASED COMPLEXITY IN RATES AND FEES HEIGHTENS NEED FOR MORE EFFECTIVE DISCLOSURES TO CONSUMERS* 23 (2006). The GAO Report noted that some cards offered rewards but still did not charge annual fees.

15 The *Washington Times* reports area consumer banking rates each Friday. Data is drawn from those published reports.

16 Brito and Hartley reported, for instance, “A senior bank officer told us that the costs to the bank of processing a loan are so high that they cannot afford to make a loan of less than \$3,000 for one year except at interest rates above those charged on credit cards.” They also note, “inquiries in Houston in February 1992 revealed rates ranging from 17 percent and a \$100 fixed fee for a collateralized 1-year loan at a branch of a major national finance company to over 50 percent for small loans (\$300 maximum) at a local finance company.” In short, bank loans of similar size and duration “either do not exist or are available only at terms more onerous than those offered by credit card issuers.” By contrast, credit cards generally require no application fee and no minimum loan size. See Dagobert L. Brito & Peter R. Hartley, *Consumer Rationality and Credit Cards*, 103 J. POL. ECON. 400, 402 (1995).

17 Durkin, *supra* note 3, at 623.

18 See Thomas A. Durkin, *Credit Card Disclosures, Solicitations, and Privacy Notices: Survey Results of Consumer Knowledge and Behavior*, FEDERAL RESERVE BULLETIN, at A109 (2006).

19 Tom Brown & Lacy Plache, *Paying with Plastic: Maybe Not So Crazy*, 73 U. CHICAGO L. REV. 63 (2006).

20 See Adam B. Ashcraft, et al., *The Bankruptcy Abuse Prevention and Consumer Protection Act: Means-Testing or Mean Spirited?* Working Paper, Federal Reserve Bank New York (Dec. 19, 2006).

